



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

DRAFT

Date:	01/06/14	Bill No:	Assembly Bill 43
Tax Program:	Sales and Use Tax	Author:	Committee on Revenue and Taxation
Sponsor:	Author	Code Sections:	RTC 6901
Position:	Support	Effective Date:	01/01/15

BILL SUMMARY

This bill authorizes a retailer to make an irrevocable election to assign the right to receive a refund of excess tax reimbursement in the amount of \$50,000 or greater to a single customer so that the Board of Equalization (BOE) may make a direct refund to the customer.

ANALYSIS

CURRENT LAW

Except where the law provides a specific exemption or exclusion, California Sales and Use Tax Law¹ imposes the sales tax on retailers for the privilege of selling tangible personal property at retail in this state. The retailer may collect reimbursement from its customer if the contract of sale so provides.² California law also imposes the use tax on the storage, use or other consumption in the state of tangible personal property purchased from any retailer.

Under existing Revenue and Taxation Code (RTC) Section 6901.5, when a retailer collects from a customer sales tax reimbursement where no tax is due or more sales tax reimbursement than is due, that excess tax reimbursement must either be returned to the customer or paid to the state.

RTC Section 6901 provides that, if the BOE determines that the retailer has paid any amount of sales tax more than once or has erroneously or illegally collected or computed the sales tax, the BOE must make note of it in its records, credit the amount to another of the retailer's BOE liabilities, and refund the balance to the retailer, or to the retailer's successor, administrator, or executor. To obtain a refund of sales tax, the retailer must submit a claim for refund to the BOE. Section 6901 further provides that the BOE shall refund any overpayment of use tax directly to the purchaser, even though the retailer collected and remitted the tax. In sum, while the statute allows the BOE to refund excess use tax directly to the purchaser, the BOE may issue a refund for excess sales tax reimbursement only to the retailer.

Under subdivision (b)(2) of the BOE's Sales and Use Tax Regulation 1700, *Reimbursement for Sales Tax*, which interprets Section 6901.5, whenever the BOE ascertains that a retailer has collected excess tax reimbursement, the retailer will be afforded an opportunity to refund the excess tax reimbursement to the customers from whom it was collected.

¹ Part 1 of Division 2 (commencing with Section 6001) of the Revenue and Taxation Code (RTC).

² Civil Code Section 1656.1. California Code of Regulations, title 18, Regulation 1700.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

Regulation 1700(b)(3) provides that the BOE may refund to the retailer excess sales tax reimbursement upon submission of sufficient evidence that the excess tax reimbursement has been or will be returned to the customer. If a retailer has not refunded excess tax reimbursement to the customer, but would rather do so than incur an obligation to the state, the retailer must: (1) inform the customer in writing that excess tax reimbursement was collected and that the excess amount will be refunded or credited to the customer; and (2) obtain and retain for verification by the BOE an acknowledgement from the customer that the customer has received notice of the amount of indebtedness of the retailer to the customer. The BOE's form BOE-52-L2, *Notice of Pending Refund of Excess Sales Tax Reimbursement*, is available to assist the retailer in informing and obtaining an acknowledgment from the customer of the pending refund.

PROPOSED LAW

This bill, under limited circumstances, allows the BOE to refund excess sales tax reimbursement directly to the customer who was overcharged the sales tax reimbursement upon the retailer's irrevocable assignment of the right to receive the refund. The BOE's direct refund to a customer would only be allowed for refunds of \$50,000 or greater to a single customer. The retailer and the customer both would need to sign the irrevocable assignment and submit it to the BOE with the retailer's claim for refund.

If enacted, the bill takes effect on January 1, 2015.

BACKGROUND

Last year's AB 1412, as amended May 24, 2013, contained provisions identical to this bill which the BOE Members had unanimously voted to sponsor. The bill passed the Assembly Appropriations Committee (17 ayes, 0 noes) and the Assembly (78-0).

On July 10, 2013, AB 1412 was amended to prohibit contingency fees that are charged or paid in connection with the election, assignment, or claim for refund relating to an irrevocable election to assign the right to receive a specified refund. The amendments were recommended by the Senate Governance and Finance Committee, which then passed the bill as amended (7 ayes, 0 noes). While the Senate Appropriations Committee passed the measure on consent, the bill stalled on the Senate Floor. On September 6, 2013, Assembly Members Bocanegra and Gatto gutted and amended the bill with provisions related to personal income taxation.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the author to allow, under limited circumstances, a direct reimbursement to a customer who was overcharged sales tax reimbursement.
2. **Refunds of excess tax reimbursement.** Under current law, when a customer overpays sales tax reimbursement to the retailer, the customer must obtain a refund of sales tax reimbursement directly from the retailer. Current law allows the BOE to issue a refund for excess tax reimbursement only to the retailer that collected and reported the sales tax.

3. **Effect of the bill.** Under limited circumstances this bill allows retailers to assign their right to receive a refund to the customer. The BOE's direct refund of excess tax reimbursement would only be allowed for refunds of \$50,000 or greater to a single customer. For the customer to obtain a direct refund, the retailer claiming the refund would be required to irrevocably assign his or right to the refund to the customer. Both the retailer and the customer are required to sign a statement authorizing the named customer. The retailer would attach the statement when submitting his or her refund claim to the BOE. After a refund claim has been validated and approved, the BOE would authorize direct payment to the retailer's customer.

Issuing a refund directly to the customer would shorten the refund process by approximately two to three months, as there would be no additional processing performed by the retailer. It would also reduce the retailer's workload, as they will not be required to perform tasks related to generating the refund, such as issuing refund checks, answering as many customer telephone calls, or maintaining as many records of the transactions.

COST ESTIMATE

The BOE will incur absorbable costs to create a new assignment form, modify existing forms, revise the BOE's regulation and publication, and respond to inquiries.

REVENUE ESTIMATE

Indeterminable. To the extent that additional claims involving excess sales tax reimbursement would be filed, this could result in a state and local revenue loss.

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